IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 30727 of 2004(S)

PETITIONERS:
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1. UNION OF INDIA, REPRESENTED BY
SECRETARY, MINISTRY OF COMMUNICATIONS
DEPARTMENT OF POSTS, NEW DELHI.

2. THE SUPERINTENDENT OF POST OFFICES
VADAKARA DIVISION, VADAKARA 673 101

3. THE DIRECTOR OF POSTAL SERVICE
NORTHERN REGION, CALICUT 673 011.

4. THE POSTMASTER GENERAL
NORTHERN REGION, CALICUT 673 011

BY ADV. SRI.JOHN VARGHESE, SCGSC

RESPONDENT:

M.K.REVEENDRAN NAIR,
S/O. GOVINDANKUTTY NAIR, EX-BRANCH
POSTMASTER, KANNADIPOYIL B.O.
RESIDING AT MANGADAN KANDI HOUSE,
KANNADIPOYIL P.O., BALUSSERY 673 612.

BY ADV. SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SMT.VINEETHA B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30727 of 2004(S)

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORIGINAL APPLICATION NO.O.A.171 OF 2002 ON THE FILE OF THE CAT, ERNAKULAM.

EXT.P2: TRUE COPY OF REPLY STATEMENT DATED 6.5.2002 SUBMITTED BY THE PETITIONERS BEFORE THE CAT, ERNAKULAM.

EXT.P3: TRUE COPY OF REJOINDER FILED BY THE APPLICANT BEFORE THE ABOVE ORIGINAL APPLICATION.

EXT.P4: TRUE COPY OF ADDITIONAL REPLY AFFIDAVIT FILED BY THE PETITIONERS TO THE REJOINDER OF THE APPLICANT.

EXT.P5: TRUE COPY OF THE ORDER DATED 21.6.2004 IN OA.171 OF 2002 OF THE CAT, ERNAKULAM BENCH.

// TRUE COPY //

TKS

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)No.30727 OF 2004

Dated 15th March, 2007

JUDGMENT

Koshy,J.

Ext.P5 order of the Central Administrative Tribunal is challenged in this petition. The respondent was an Extra Departmental Branch Postmaster. The Inspector of Post Offices inspected the post office on 7.3.1998 and noticed that there was a cash shortage of Rs.7,500/= and directed the respondent to go and bring the money. The respondent within half an hour came with the cash and the same was kept in safe custody. However, he was removed from service after conducting an enquiry finding that he has failed to maintain the absolute integrity and devotion to duty as a sum of Rs.7,500/= was short in cash balance when the Inspector of Post Offices inspected. The facts are not disputed. Rule 11 of the Rules for Branch Offices reads as follows:

> "**Custody of cash:**
>
> (1) It may not be necessary to supply a safe to every extra departmental branch office, but one may at the discretion of the Supdt. Post Offices be provided on the report of the S.D.I supported by the recommendation of the S.D.I.
>
> (2) When a safe is supplied to a branch office, the cash, postage stamps, articles

in deposit, stamps and seal, and in short, all articles of value including money order forms should be locked up in it, special care being taken to lock up insured articles in deposit and the B.P.M. Should keep the key or keys on his person by day and night. The greater portion of the stock of postage stamps of the office should always, even during the day time, be kept in side the safe, and only the stamps required for a day's sales, or half a day's sales should be taken out at a time.

> **Note**- All E.D.B.P.Ms, whether their offices are provided with iron safes or not should make their own arrangements for the safe custody of cash and valuables on their own responsibility. They are at liberty to keep the cash and valuables wherever they like provided that they are available when required and that, when called for, they can be produced for inspection within the time required for going to and coming back from the place where the cash is kept for safe custody."

Extract of P&T Manual Volume V Paragraph 217

> "If a supervising officer finds a deficiency in the cash or stamp balance of a post office or record office, the Post Master or Treasurer or both in the case of Post Office or the record clerk in the case of Record Offices should be called upon to produce the money or stamps. If the official or officials cannot do so and are unable to give a satisfactory explanation an inventory of the cash and stamps actually found should be drawn up and got signed by two independent witnesses and action should be taken as prescribed in the rules on the subject of criminal offences in Chapter IV, P&T Manual

Vol.II.

> **Note 1.** All extra departmental sub & Branch Post Masters, whether their offices are provided with iron safes or not, <u>are required to make their own arrangements for the safe custody of cash</u> and valuable on their own responsibility.
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> **Note 2.** In the case of Sub or Branch Office in charge of an ED Agent when deficiency in the cash or stamp balance is noticed by a supervising officer, time should be given to the ED Agent to send for the cash, stamps etc. and no charge of fraud should be made against him, unless he is unable to produce the full balance shown by the accounts "within the time required for going to and coming back from place where the cash is kept for safe custody". Supervising officer should make local enquiries and if has good reason to suspect dishonesty, he should proceed in accordance with the instruction in the above rule."

It is an admitted case that when the Inspector requested to produce the amount, the deficient cash was produced within half an hour. As per the Rules, he is entitled to keep the amount in safe custody in his house. Considering the contentions, the Tribunal found as follows:

> "The only charge against the applicant is that when the Inspector of Post Offices inspected the Post Office and checked the cash balance and the stamps account, a sum of Rs.7500/= in

> cash was found short. The Inspector visited the office at 10 A.M. When the amount was found short, he immediately charged the shortage as "unclassified payment" and then only permitted the applicant to bring the cash. The applicant immediately went to his house and brought the cash, but he was made to deposit the same at 11 A.M. There is no allegation that athe applicant did not keep the money in safe custody in his house or that he took more time than required to produce the money. Under these circumstances, we find that the action on the part of the Inspector in charging the sum of Rs.7500/- as unclassified payment, making the applicant deposit the money and proceeding against the applicant was against the provisions contained in Rule 11 of the Rules of Branch Offices as also paragraph 217 of the P&T Manual Vol.V. Even after the applicant explained in his statement that he had acted in accordance with the said provisions, the disciplinary authority decided to continue with the proceedings. The finding that the applicant guilty, therefore, is perverse and unsustainable. The appellate and revisional orders are also bereft of application of mind and are not sustainable."

We fully agree with the findings in the light of the rules quoted earlier. He kept the amount in safe custody and within half an hour of the inspection the amount was produced to show that he kept the cash in safe custody. Therefore, removal of service was incorrect. He has not conducted any misconduct at all. He has only kept the cash in safe custody at his own responsibility according to the

rules. Therefore, the Tribunal set aside the order and directed to reinstate him with full backwages. Since the disciplinary action taken against the respondent is illegal, we see no ground to interfere in the order of the Tribunal. In any event, it is not stated that the findings are illegal or perverse so as to interfere in a petition under Article 227 of the Constitution of India.

The writ petition is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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